

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Annual Assessment of the Status of)	MB Docket No. 04-227
Competition in the Market for the)	
Delivery of Video Programming)	

REPLY COMMENTS OF TIVO INC.

TiVo Inc. (“TiVo”) submits these reply comments regarding retail availability of navigation devices to consumers, in response to the Federal Communications Commission’s (the “FCC’s” or “Commission’s”) Notice of Inquiry in the captioned proceeding.¹ TiVo applauds the Commission for considering the impact on competition at the end of the “pipe” in the context of this inquiry.

As things currently stand, by July 1, 2006, cable operators will no longer be allowed to offer conditional access and other functions in a single integrated device (the “Reliance Date”).² Maintenance of this date is absolutely critical. Unless cable operators are required to use CableCards in their own products, there will never be any meaningful competition in the navigation device market.

Cable operators already enjoy a significant competitive advantage over consumer electronics companies in providing navigation devices to consumers, given their ongoing

¹ *In the Matter of Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 04-227, Notice of Inquiry, FCC 04-136, rel. Jun. 17, 2004 (“NOI”) at para. 31.

² *See Implementation of Section 304 of the Telecommunications Act of 1996, Commercial Availability of Navigation Devices*, 18 FCC Rcd 20885 (2003). *See also* 47 C.F.R. Section 76.1204(a)(1).

relationship with the consumer and their ability to lease set-top boxes for a low monthly fee, rather than requiring consumers pay hundreds of dollars to purchase a set-top box. The Commission should not allow this substantial, inherent advantage of cable operators to be compounded by the further considerable advantage that would result from any extension or elimination of the Reliance Date. If cable operators do not have to use CableCards in their devices, it will be nearly impossible for consumer electronics companies to overcome their competitive disadvantage in terms of cost and convenience.

The “buy” versus “lease” situation is difficult enough to overcome. If added to that disadvantage is the additional cost and inconvenience of having the cable operator “install” a CableCard and then having to pay an extra monthly fee to lease the CableCard, most, if not all, cable customers will choose the product supplied by the cable operator. Similarly, any differences in functionality or programming that the competitive products are unable to offer will further exacerbate the competitive imbalance. In short, every way in which a competitive product must differ from cable operator-provided products impedes competition.

The cable industry’s call for the elimination of the Reliance Date on the grounds of promoting consumer choice is rather remarkable.³ If the playing field is so tilted in favor of the cable operator-provided set-top box (*i.e.*, no purchase necessary, no CableCard fee, access to all programming, HD, dual-tuner, free installation, and so on), no meaningful competition can exist. If one player in a market has an insurmountable advantage, by definition, there exists a “non” or “anti” competitive situation.

³ See Reply Comments of National Cable & Telecommunications Association, CS Docket No. 97-80 (March 10, 2004) at p.10-14.

On the other hand, requiring cable operators to use the same separate security device used by consumer electronics companies would undoubtedly result in a reduction in the cost of CableCards, reduce this element of competitive imbalance, and thereby benefit consumers by offering real competitive choice in set-top-boxes.⁴

Further, retention of the Reliance Date is critically important to ensure that CableCard enabled devices actually work in cable systems. If cable operators are not obligated to use CableCards themselves, they have no economic incentive to ensure that CableCard devices will work on their systems. Indeed, there may be a clear disincentive to make them work properly. To the extent that a CE-provided CableCard device offers a service or functionality that competes with an offering provided by a cable company – a DVR service, for instance – a cable operator will be motivated to steer customers away from the CableCard device and towards the cable operator-provided set-top-box.

As the Commission's annual reports over the past few years amply demonstrate, the Commission's policies have helped usher in an era of unprecedented video competition, to the great benefit of consumers. Knowing that, by July 1, 2006, cable operators will no longer be allowed to offer conditional access and other functions in a single integrated device will enable TiVo and other consumer electronics companies to develop and deploy set-top boxes bringing innovative new services to consumers with the confidence that such products have a fair chance to succeed in the marketplace. The

⁴ Since cable operators already are required to support CableCards, use of CableCards themselves should not be an additional operational burden. To the extent that CableCards cause an increase in costs, such increase should be short-lived given the economic effects of volume resulting from widespread use by cable operators.

Commission should continue to foster competition in the video marketplace by not allowing any further postponement, much less elimination of, the Reliance Date.

Respectfully submitted,

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August 25, 2004

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